

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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FILED

SEP 21 2005
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U. S. DISTRICT COURT
EASTERN MICHIGAN

LOUIS REEDUS,

Petitioner,

CIVIL ACTION NO. 00-CV-73585-DT
HONORABLE ARTHUR J. TARNOV

v.

JIMMY STEGALL,

Respondent.

**ORDER DENYING A CERTIFICATE OF APPEALABILITY
AND LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**

Petitioner seeks to appeal this Court's July 11, 2005 denial of his motion for relief from judgment under Federal Rule of Civil Procedure 60(b), which concerned the Court's denial of his habeas corpus petition.

Before Petitioner may appeal the Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. *See* 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.2d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue "only if the applicant has made a

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substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).


When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claim debatable or wrong. When a federal district court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

Petitioner’s motion for relief from judgment, although brought under Federal Rule of Civil Procedure 60(b), sought reconsideration of the denial of his habeas petition. The Sixth Circuit, however, affirmed this Court’s decision denying the habeas petition. Furthermore, Petitioner is not entitled to relief under Rule 60(b), as he has not shown that the Court erred in denying his habeas claims. The United States Supreme Court’s decisions in *Crawford v. Washington*, 541 U.S. 36 (2004), and *Massaro v. United States*, 538 U.S. 500 (2003), do not mandate a different result. Petitioner has not made a substantial showing of the denial of a constitutional right as to the denial of his motion for relief from judgment.

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Accordingly, the Court **DENIES** a certificate of appealability. Given this determination, the Court also **DENIES** leave to proceed on appeal *in forma pauperis*. See Fed. R. App. P. 24(a).

IT IS SO ORDERED.



ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

DATED: SEP 21 2005

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